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Arizona Corporation Commission

DOCKETED

MAY 23 2008

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE FORMAL
COMPLAINT OF WESTCOR/GOODYEAR,
L.L.C. and GLOBE LAND INVESTORS,
L.L.C. AGAINST LITCHFIELD PARK
SERVICE COMPANY

DOCKET NO. SW-O1428A-08-0234

**EMERGENCY MOTION FOR
WILL-SERVE LETTER AND
OTHER EXPEDITED RELIEF**

Westcor/Goodyear L.L.C. ("Westcor") and Globe Land Investors, L.L.C. ("Globe") (together the "Developers") move for an order from the Arizona Corporation Commission ("Commission") compelling Litchfield Park Service Company ("LPSCo") to provide a water and wastewater "will-serve letter" and execute line extension agreements for Phase II of Developers' Estrella Falls development. In support of their motion,

1 Developers attach Exhibit A, the Declaration of Garrett Newland. In further support,
2 Developers state as follows:

3 **I. BACKGROUND**

4 1. Developers have worked together in the development of Estrella Falls, a
5 330-acre master planned mixed-use land development located north of Interstate 10
6 between Pebble Creek Parkway and Bullard Avenue in the City of Goodyear.¹

7 2. Estrella Falls is located within the area for which LPSCo is responsible for
8 providing water and wastewater treatment service under a Certificate of Convenience and
9 Necessity ("CC&N") issued by Commission.²

10 3. On June 1, 2001 LPSCo and Globe executed the Commercial Wastewater
11 Facilities Agreement ("2001 Commercial Agreement"). Among other things, the 2001
12 Commercial Agreement requires phased payments to LPSCo for treatment capacity to
13 serve the 300 commercial acres located within LPSCo's CC&N.³

14 4. Under a related Residential Wastewater Facilities Agreement ("2001
15 Residential Agreement"), LPSCo also agreed to provide wastewater services sufficient to
16 serve the adjacent residential development at Estrella Falls. In exchange, Globe agreed to
17 advance an additional \$2,462,198 to LPSCo to partially fund LPSCo's new Palm Valley
18 facility. Developers have provided all the facility advances to LPSCo required by the
19 2001 Residential Agreement.⁴

20 5. Developers have already made the six Phase I capacity payments to LPSCo
21 required under the 2001 Commercial Agreement. Phase I capacity payments were
22 intended to secure wastewater service for Phase I of Estrella Falls, a portion of a 66-acre
23 retail "power center" on the northeast corner of McDowell and Pebble Creek Parkway.

24
25 ¹ Exhibit A, ¶ 3.

² Decision No. 64358, dated January 15, 2002.

³ Exhibit A, ¶¶ 8, 9.

26 ⁴ Exhibit A, ¶ 11.

1 This power center will consist of approximately 500,000 square feet of retail space,
2 including major tenants, shops, and pad buildings plus two hotels. The Phase I capacity
3 payments provided Developers the right to receive, and LPSCo the obligation to provide,
4 wastewater-treatment service for up to 60,000 gallons of average daily flow (30 acres x
5 2,000 gal average daily flow per acre).⁵

6 6. LPSCo and Developers have also executed a series of Line Extension
7 Agreements, by which Developers have constructed and contributed a portion of the
8 backbone facilities required to support service to the Estrella Falls project at the Palm
9 Valley plant.⁶

10 7. In late 2007 Developers were ready to begin construction of the balance of
11 the power center and the adjacent Estrella Falls regional mall, which triggered their
12 obligation under the 2001 Commercial Agreement to make the Phase II capacity payment
13 of \$2,588,760. However, when Developers tendered the Phase II payment, LPSCo
14 refused to accept it. On February 13, 2008, Westcor announced a one-year delay for the
15 Estrella Falls mall, in part because of concerns about LPSCo's willingness to provide
16 wastewater service.⁷

17 8. To receive wastewater service for Phase II, Developers believe that they are
18 only required to pay the Phase II capacity payment of \$2,588,760, as expressly set forth in
19 the 2001 Commercial Agreement. However, in an attempt to resolve this dispute in a
20 timely manner, on April 23, 2007, Developers tendered \$4,134,375 (270 acres x 2,000
21 gal/acre x (\$2,450/320 gal)) to LPSCo for the Phase II capacity payment, calculated in
22 accordance with LPSCo's new hook-up fee tariff, which became effective on April 1,
23 2008. On April 29, 2008, LPSCo rejected the tender.⁸

24 ⁵ Exhibit A, ¶ 9.

25 ⁶ Exhibit A, ¶ 12.

26 ⁷ Exhibit A, ¶¶ 13, 18, 23.

⁸ Exhibit A, ¶ 24.

9. LPSCo has adequate capacity at the existing Palm Valley Facility to treat all wastewater flows attributable to Phase II of Estrella Falls, as LPSCo committed to provide in the 2001 Commercial Agreement. LPSCo president Robert Dodds has told Developers on several occasions that LPSCo presently has adequate capacity to provide wastewater collection and treatment services for all of Phase II of Estrella Falls. LPSCo's corporate parent, Algonquin Power Income Fund, continues to represent to the public that the Palm Valley Facility is operating at only 40% of its 4.2 million-gallons-per-day ("MGD") capacity. Finally, LPSCo is adding approximately one MGD of additional treatment capacity at the Palm Valley Facility.⁹

10. On May 5, 2008—the same date they filed this Commission Complaint, Developers filed a complaint in Maricopa County Superior Court concerning the 2001 Commercial Agreement alleging, among other things, breach of contract by LPSCo, and seeking, among other things, recovery of direct, consequential, and punitive damages.

II. JURISDICTION

11. The Commission has authority to grant the requested relief. Under the Arizona Constitution, the Commission is granted "full power" to "make reasonable rules, regulations and orders, by which [public service] corporations shall be governed in the transaction of business within the State."¹⁰ Pursuant to its regulatory powers, the Commission has the authority to make orders respecting health and safety, as well as orders respecting comfort, convenience, adequacy, and reasonableness of service.¹¹ The Commission is also charged with the authority to take action to avoid discrimination between parties, localities, or classes of services as to rates, charges, services, and facilities.¹²

⁹ See Docket No. SW-01428A-06-044, March 21, 2008, Staff Compliance Report at 2; Exhibit A, ¶22.

¹⁰ Ariz. Const. Art. 15, § 3.

¹¹ A.R.S. §§ 40-202(A), 40-321, 40-322.

¹² A.R.S. § 40-334.

1 12. The Commission also has authority to grant the requested relief pursuant to
2 the express provisions of the 2001 Commercial Agreement. The 2001 Commercial
3 Agreement states that all rights and obligations between LPSCo and Developers,
4 including those regarding wastewater utility service, are “subject to the rules and
5 regulations of the Commission and all applicable rates, fees, charges, and tariffs of
6 [LPSCo] as approved by the Commission...”¹³

7 **III. WILL-SERVE LETTER**

8 13. At the request of a developer, a water or wastewater utility will normally
9 provide a “will-serve letter” for a particular development. A will-serve letter typically
10 provides that the utility is authorized to serve the development, has the capacity to serve
11 the development, and is committing to serve the development. The utility’s commitment
12 is typically conditioned upon a developer’s execution of a suitable line-extension
13 agreement, and its satisfactory construction of required on-site facilities. Service will then
14 be provided in accordance with the utility’s Commission-approved tariffs.

15 14. Pursuant to the 2001 Commercial Agreement, on February 18, 2008, LPSCo
16 provided a will-serve letter to Developer for Phase I of Estrella Falls. This has allowed
17 Developers to proceed with the financing, engineering, and construction required for
18 Phase I tenants to take occupancy.¹⁴

19 15. Phase II capacity is now required to serve the remaining tenants of the
20 Power Center, who must immediately enter into leases or purchase/sales agreements to
21 allow them to open for business in the first and second quarters of 2009. However,
22 Developers cannot execute these agreements without a will-serve letter from LPSCo.¹⁵

23 16. Phase II capacity is also required for tenants of the regional mall, which is
24 expected to open in the fall 2010. Developers cannot proceed with the financing,

25 ¹³ 2001 Commercial Agreement at Section V.B.

26 ¹⁴ Exhibit A, ¶ 16.

¹⁵ Exhibit A, ¶ 15.

1 engineering, and construction required for the mall without a will-serve letter from
2 LPSCo.¹⁶

3 17. However, despite having sufficient capacity at this time to serve all of Phase
4 II, LPSCo will not provide a will-serve letter for Phase II unless Developers agree to pay
5 an estimated \$14.5 Million toward construction of LPSCo's planned Sarival Road
6 Treatment Plant and a new force main that will redirect wastewater from the Palm Valley
7 Facility to this new Sarival Road Plant.¹⁷

8 IV. CONSEQUENCES OF PHASE II DELAYS

9 18. Developers are already being damaged by delay of the Power Center as a
10 result of LPSCo's failure to provide the required Phase II will-serve letter. If LPSCo does
11 not provide the Phase II will-serve letter by August 31, 2008, Developers may not be able
12 to meet their obligations to the remaining Power Center tenants. In that case, Developers
13 would incur significant, continuing, consequential damages.¹⁹ Also, local residents, who
14 have long expected to be able to shop at these businesses, will continue to have to travel to
15 other jurisdictions to shop, consequentially wasting precious time and burning expensive
16 gasoline.

17 19. Developers have already been forced to delay the regional mall for one year,
18 in part because LPSCo refused to honor the 2001 Commercial Agreement and provide the
19 required will-serve letter. If Developers cannot promptly obtain a Phase II will-serve
20 letter, Developers will have no choice but to again delay the regional mall. Again,
21 Developers would incur significant, continuing, consequential damages. If construction
22 does not begin this fall (2008), Westcor may lose key tenants, thereby causing enormous
23 monetary losses for Developers. In addition, Westcor/Globe has already incurred damage

24 ¹⁶ Exhibit A, ¶ 15.

25 ¹⁷ Exhibit A, ¶ 19.

26 ¹⁹ Exhibit A, ¶¶ 25-26.

1 as a result of the delay in commencement of construction of the Estrella Falls Mall
2 because Developers will not have lease payments from any mall tenants to partially offset
3 Improvement District Assessments Payments which begin in January 2010.²⁰

4 20. Local residents, who have long expected to be able to shop at the mall, will
5 continue to have to travel to other jurisdictions to shop, consequentially wasting precious
6 time and burning expensive gasoline. Thousands of new jobs will be delayed for at least
7 another year. Finally, each year of delay will cost the City of Goodyear approximately
8 \$6-7 million in sales-tax revenues.²¹

9 **V. AVOIDING PHASE II DELAYS**

10 **A. Show Cause Proceeding**

11 21. If LPSCo issues a will-serve letter and executes the required line extension
12 agreements by August 31, 2008, Developers will be able to avoid significant delays in the
13 completion of the Phase II facilities, including the regional mall. Therefore, Developers
14 are asking the Commission to order LPSCo to issue a will-serve letter by this date.
15 Exhibit B is a form will-serve letter that will allow Developers to timely construct the
16 Phase II facilities.

17 22. Developers will also require LPSCo to execute line extension agreements
18 for all remaining construction. Therefore, Developers are also asking the Commission to
19 order LPSCo to execute line extension agreements by August 31, 2008. Exhibit C is a
20 form wastewater line extension agreement for Phase II, modeled after LPSCo's standard
21 line extension agreements. Exhibit D is a similar form water line extension agreement for
22 Phase II.

23
24
25
26 ²⁰ Exhibit A, ¶¶ 27-29.

²¹ Exhibit A, ¶¶ 30-31.

1 23. To protect LPSCo, Developers are willing to provide a letter of credit or
2 similar security in an amount the Commission determines is reasonable to secure
3 Developers' obligation to make the Phase II Capacity payment.

4 24. To allow time for LPSCo to complete the Will-Serve Letter and for the
5 parties to finalize the line-extension agreements by August 31, 2008, Developers request
6 the Commission set the following procedural schedule:

- 7 • May 30, 2008 LPSCO Responds to Motion
- 8 • June 4 Show Cause Order (Sets date for hearing)
- 9 • June 5-27 Expedited discovery
- 10 • June 16 Parties File Simultaneous Testimony
- 11 • June 23: Staff files written testimony (if desired)
- 12 • Week of June 30 One-day Show-Cause Hearing
- 13 • July 8 Simultaneous Briefs
- 14 • July 15 Recommended Opinion and Order
- 15 • July 25 Exceptions
- 16 • July 29 Open Meeting

17 After the Commission decides whether it should order LPSCo to issue the Will-Serve
18 Letter and execute the Line Extension Agreements, it could then set a hearing schedule to
19 allow the Commission to determine the correct amount of the Phase II Capacity payment.

20 25. The requested relief is in the public interest for the following reasons:

21 A. It will mitigate the potential damages LPSCo likely will be ordered to
22 pay in the Superior Court proceeding. A large money judgment could hamper LPSCo's
23 ability to make the investments and incur the costs needed to provide timely and adequate
24 water and wastewater services to its customers.

25 B. It will avoid significant delays for the Estrella Falls development,
26 including the regional mall.

1 C. LPSCo will not be harmed because it presently has sufficient
2 capacity to provide wastewater service to Phase II of Estrella Falls until such time as the
3 Commission determines the amount of the Phase II Capacity payment, and because
4 Developers are willing to provide a letter of credit or similar security in an amount the
5 Commission determines is reasonable to secure Developers' obligation to make the Phase
6 II Capacity payment..

7 **B. Alternative Relief – Expedited Procedural Schedule**

8 26. In the alternative, should the Commission decline to provide the requested
9 orders, Developers ask the Commission to set an expedited hearing schedule to allow the
10 Commission to issue a final Order resolving all issues in this matter by August 31, 2008.

11 A suggested expedited procedural schedule follows:

- 12 • May 30, 2008: LPSCO Responds to Motion
- 13 • June 4: Procedural Order (Sets date for motion argument)
- 14 • June 5-27 Expedited discovery
- 15 • June 16: Westcor/Globe and LPSCo file written testimony
- 16 • June 23: Staff files written testimony
- 17 • Week of June 30: Hearings on all issues
- 18 • July 15: Simultaneous Briefs
- 19 • August 5: Recommended Opinion and Order
- 20 • August 19: Exceptions
- 21 • August 26: Open Meeting

22 This is clearly a difficult, less-favored alternative.

23 **VI. CONCLUSION**

24 27. Granting Developers' request for emergency relief is clearly in the public
25 interest. It will avoid significant delays for the Estrella Falls development, including the
26 regional mall. It will mitigate the potential damages LPSCo likely will be ordered to pay

1 in the Superior Court proceeding. Finally, LPSCo will not be harmed because it presently
2 has sufficient capacity to provide wastewater service to Phase II of Estrella Falls until
3 such time as the Commission determines the amount of the Phase II Capacity payment,
4 and because Developers are willing to provide a letter of credit or similar security in an
5 amount the Commission determines is reasonable to secure Developers' obligation to
6 make the Phase II Capacity payment.

7
8 **VII. REQUESTED RELIEF**

9 WHEREFORE, Westcor/Goodyear LLC and Globe Land Investors, L.L.C.
10 respectfully request that the Commission:

11 A. Order LPSCo to issue a will-serve letter for Phase II of Estrella Falls in the
12 form provided in Exhibit B by August 31, 2008;

13 B. Order LPSCo to execute line extension agreements for Phase II of Estrella
14 Falls in the form provided in Exhibits C and D by August 31, 2008;

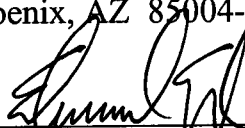
15 C. In the alternative, order an expedited procedural order as set forth above;
16 and

17 D. Award Developers such other relief as the Commission deems proper.
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25 ...
26 ...

1 RESPECTFULLY SUBMITTED this 23rd day of May, 2008.

2
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8 By 
Don P. Martin
9 Edward A. Salanga

10 Attorneys for Complainants
11 Westcor/Goodyear, L.L.C. and
Globe Land Investors, L.L.C.

12 **Original and 13 copies filed**
13 on May 23rd 2008, to:

14 Docket Control
15 Arizona Corporation Commission
1200 West Washington
16 Phoenix, Arizona 85007

17 **Copy of the foregoing delivered**
on May 23rd 2008, to:

18 Ernest Johnson
19 Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
20 Phoenix, Arizona 85007

21 Lyn Farmer
22 Chief Hearing Officer
Arizona Corporation Commission
1200 West Washington
23 Phoenix, Arizona 85007

24 Janice Alward
25 Chief Counsel
Arizona Corporation Commission
1200 West Washington
26 Phoenix, Arizona 85007

1 Steve Olea
2 Assistant Director, Utilities Division
3 Arizona Corporation Commission
4 1200 West Washington
5 Phoenix, Arizona 85007

6 **Copy of the foregoing mailed and hand-delivered**
7 **on May 23rd 2008, to:**

8 Jay Shapiro
9 Fennemore Craig
10 3003 North Central Avenue, Suite 2600
11 Phoenix, AZ 85012-2913
12 Attorneys for Litchfield Park Service Company

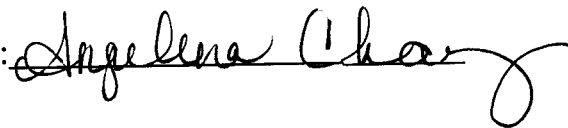
13 By: 
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EXHIBIT “A”

DECLARATION OF GARRETT NEWLAND

I, Garrett Newland, do hereby declare, swear, affirm, and state as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated herein.

2. I am a Vice President of Development for Westcor, a wholly-owned subsidiary of the Macerich Company ("Westcor").

3. Westcor and Globe Land Investors, L.L.C. ("Globe") are working together to develop a project known as "Estrella Falls." Estrella Falls is a 330-acre master planned mixed-use land development north of Interstate 10 between Pebble Creek Parkway and Bullard Avenue in the City of Goodyear. A copy of the Conceptual Master Plan for Estrella Falls is attached hereto as Exhibit 1.

4. Westcor is the master developer of public and private infrastructure for Estrella Falls, and Westcor and Globe share the cost of planning and constructing improvements necessary for the provision of water and wastewater service to the project. As Westcor's Vice President of Development, I have been directly involved in the planning and execution of the Estrella Falls development, including the planning and constructing of improvements necessary for the provision of wastewater service for the project.

5. The Estrella Falls project is being developed in phases. Phase I of Estrella Falls is a portion of a 66-acre retail "power center" on the northeast corner of McDowell Road and Pebble Creek Parkway (the "Power Center"). The Power Center will consist of approximately 500,000 square feet of retail space, including major tenants, shops and pad buildings, plus two hotels. Phase II of the Estrella Falls project involves the remainder of the Power Center and the development of a regional center known as the Estrella Falls Mall on the northwest corner of McDowell Road and Bullard Avenue. The regional mall is located on approximately 107 acres and will consist of approximately one million

square feet of retail space, including major tenants, shops, restaurants and pad buildings. The remainder of Phase II includes approximately 127 acres of other commercial and mixed-use development surrounding the mall and the Power Center. A copy of the Site Plan for the Estrella Falls Mall is attached hereto as Exhibit 2.

6. According to documents maintained by the Arizona Corporation Commission ("Commission") Estrella Falls is located within the water and wastewater treatment service area covered by Litchfield Park Service Company's ("LPSCo") Certificate of Convenience and Necessity ("CC&N").

7. It is my understanding that LPSCo is a wholly owned subsidiary of Algonquin Resources of America, Inc., which is in turn a wholly owned subsidiary of Algonquin Power Income Fund, a Canadian open-ended investment trust ("Algonquin")

8. In 2001, Globe entered into various agreements with LPSCo for the provision of water and wastewater service to Estrella Falls, including a Commercial Wastewater Facilities Agreement, dated June 1, 2001 (the "2001 Commercial Agreement").

9. The 2001 Commercial Agreement provides for two phases of treatment capacity payments. Under the 2001 Commercial Agreement, the Phase I treatment capacity payments provided Westcor/Globe with the right to receive, and LPSCo the obligation to provide, wastewater treatment service for up to 60,000 gallons of average daily flow (30 acres x 2,000 gallons average daily flow per acre). This is sufficient wastewater treatment capacity to cover Phase I of the Estrella Falls development.

10. Since the execution of the 2001 Commercial Agreement, Westcor and Globe have agreed that each would be responsible for funding a portion of the facility advances and offsite infrastructure improvements required under the Commercial and Residential Agreements.

11. Under a related Residential Wastewater Facilities Agreement ("2001 Residential Agreement"), LPSCo also agreed to provide wastewater services sufficient to serve the adjacent residential development at Estrella Falls. In exchange, Globe agreed to advance an additional \$2,462,198 to LPSCo to partially fund LPSCo's new Palm Valley facility. Developers have provided all the facility advances to LPSCo required by the 2001 Residential Agreement.

12. LPSCo and Developers have also executed a series of Line Extension Agreements, by which Developers have constructed and contributed a portion of the backbone facilities required to support service to the Estrella Falls project at the Palm Valley plant.

13. In late 2007, Westcor/Globe was ready to initiate construction of Phase II of the Estrella Falls development. At that time, we were scheduled to begin construction of the Estrella Falls Mall in January 2008, had already mobilized a contractor to begin preliminary site work for the mall, and had begun construction of the Power Center.

14. It was my understanding that wastewater treatment service for Phase I and Phase II of the Estrella Falls development would be provided by LPSCo's water reclamation facility in Palm Valley, east of the Estrella Falls development (the "Palm Valley Facility"). My understanding that wastewater treatment service for both phases of the Estrella Falls development would be provided by the Palm Valley Facility was based on, among other things, the following facts:

A. Coe & Van Loo Consultants, Inc. prepared a Goodyear Planned Regional Center Wastewater Master Plan for Westcor/Globe that was dated June 16, 2000 (the "Wastewater Master Plan"). LPSCo approved, with comments, the Wastewater Master Plan on July 20, 2000. The Proposed Sewer System depicted on Figure 4-1 of the Wastewater Master Plan depicts a planned sewer line taking wastewater from the Estrella Falls development to a wastewater treatment facility east of Bullard Avenue.

B. On January 15, 2002, the Commission approved LPSCo's requested CC&N expansion in Section 32. The Commission noted that LPSCo had entered into main extension agreements with developers to build three new wells and was in the process of constructing a new 4.1 million gallons per day ("mgd") water reclamation facility in Palm Valley (the "Palm Valley Facility") to be used by "existing customers and future customers in the expansion area." [Decision No. 64358 at 3:17-3:21.] The Commission explicitly recognized that future customers within the expansion area would include a regional mall and a mixed-use commercial development. [Id. at 3:10-3:13.] The Commission cited LPSCo's expectation that the regional mall would "be built in seven to eight years." [Id. at 3:16.] The Commission further cited Commission Staff's conclusion that LPSCo could meet "the demands of its existing customers and provide for future growth" with the development of these new wells and the Palm Valley Facility. [Id. at 4:16-4:19.]

C. In 2006, Westcor/Globe began submitting engineering drawings to LPSCo in conformance with the Estrella Falls Wastewater Master Plan approved by LPSCo in October 2006 and consistent with the Goodyear Planned Regional Center Wastewater Master Plan approved by LPSCo in July 2000. The engineering drawings submitted by Westcor/Globe detailed the Estrella Falls facilities and the onsite wastewater collection system for the delivery of wastewater from Estrella Falls to the Palm Valley Facility.

D. LPSCo reviewed and commented upon those plans in a series of communications with Westcor/Globe in 2006 and 2007, and never suggested to Westcor/Globe that the Palm Valley Facility (which Westcor/Globe had paid for in part) had inadequate capacity to serve the Estrella Falls project.

E. Westcor/Globe also executed a series of Line Extension Agreements, by which Westcor/Globe has constructed and advanced—and LPSCo has accepted—the

backbone facilities required to support service to the Estrella Falls development. These backbone facilities included the construction of a 12" force main along the southern McDowell Road boundary of the Estrella Falls development for the delivery of wastewater to the Palm Valley Facility east of Bullard Avenue.

F. Dave Ellis, former LPSCo President, told me during a December 27, 2007, meeting that "all of our agreements contemplated providing service for Phase I and Phase II out of the Palm Valley Facility."

15. In order to secure tenants and obtain financing so that they could proceed forward with the construction of Phase II of the Estrella Falls development, Westcor/Globe needs "will serve" letters from LPSCo. A "will serve" letter typically provides that the utility is authorized to serve the development, has the capacity to serve the development, and is committing to serve the development. The utility's commitment may be conditioned upon a developer's execution of a suitable line-extension agreement, and its satisfactory construction of required on-site facilities. Service will then be provided in accordance with the utility's Commission-approved tariffs.

16. On February 18, 2008, LPSCo provided a will-serve letter to Westcor/Globe for Phase I of the Estrella Falls development. A copy of this will-serve Letter is attached hereto as Exhibit 3. However, before it will give will-serve letters for Phase II of Estrella Falls, LPSCo is demanding the Phase II treatment capacity payment required by the 2001 Commercial Agreement.

17. In late September 2007, after Westcor/Globe had commenced construction of the Power Center, LPSCo claimed, for the first time, that Westcor/Globe could no longer rely upon long-term treatment capacity from the Palm Valley Facility.

18. On February 4, 2008, Westcor/Globe's tendered to LPSCo \$2,588,760 as payment in full of the Phase II capacity payment under the 2001 Commercial Agreement.

A copy of the February 4, 2008, letter is attached hereto as Exhibit 4. LPSCo refused Westcor/Globe's payment and returned Westcor/Globe's check.

19. LPSCo has demanded instead that Westcor/Globe contribute funds toward another water-reclamation facility on Sarival Road, west of the Estrella Falls development (the "Sarival Road Plant"). LPSCo has also demanded that Westcor/Globe contribute the cost of constructing a force main from the Palm Valley Facility to the new Sarival Road plant, after Westcor/Globe had already constructed, with LPSCo's approval, a force main to carry wastewater from the Estrella Falls development to the Palm Valley Facility. I estimate that LPSCo's new monetary demands total approximately \$14.5 Million for the construction of these additional facilities.

20. LPSCo now contends that Westcor/Globe must contribute these funds because the Palm Valley Facility does not have sufficient permanent capacity. For example, in a January 16, 2008 email, Bob Dodds, LPSCo's general manager, wrote to me and others from Westcor/Globe explaining that "the current requirement for 673,000 gallon ...[estimated average daily flow for Phase I and Phase II of Estrella Falls] exceeds the capacity available at the current plant and hence necessitates construction of new capacity for Westcor's needs." A copy of Mr. Dodd's January 16, 2008 email is attached hereto as Exhibit 5. These comments from Mr. Dodds echoed similar statements made by Ian Robertson and Ed Pamatat, two Algonquin officials, during a meeting that I attended on January 9, 2008 along with Christine McRight, Rob Bassett, George Getz, Ray Carter, Dave Scholl, Greg Sorenson and Bob Dodds.

21. During this same January 9, 2008 meeting, Westcor/Globe requested a list of the agreements LPSCo had entered into involving a commitment of treatment capacity from the Palm Valley Facility. The LPSCo representatives at that meeting told us that they would provide that information. Over four months later, LPSCo has still not

identified any other parties to whom it has promised Palm Valley Facility treatment capacity.

22. LPSCo has previously represented, and continues to represent to the public, that the Palm Valley Facility has sufficient capacity for Phase II of the Estrella Falls development. For example,

A. In 2001-2002, LPSCo advised the Commission that the Palm Valley Facility would provide sufficient capacity for "existing customers and future customers in the expansion area" including a regional mall and a mixed-use commercial development. [Decision No. 64358 at 3:10-3:21.]

B. Bob Dodds, LPSCO's general manager, has stated on a number of occasions that LPSCO presently has sufficient capacity to collect and treat wastewater generated by Phase II of the Estrella Falls development.

C. During the January 9, 2008 meeting between Westcor/Globe and LPSCo representatives previously described, LPSCo represented that it was planning to make a process change to the Palm Valley Facility that would expand that facility's wastewater treatment capacity by 1 mgd for a total capacity of 5.1 mgd. LPSCo represented to us that this expansion would be complete within a few months.

D. As of May 10, 2008, Algonquin was representing to the public on its websites that LPSCO's 4.2 MGD Palm Valley Facility "operates at 40% capacity and supplies 'Class A+' reclaimed water to a number of local golf courses in the area." Excerpts from Algonquin's websites are attached as Exhibit 6.

23. On February 13, 2008, Westcor announced a one-year delay for the Estrella Falls mall, in part because of concerns about LPSCo's willingness to provide wastewater service.

24. However, in an attempt to resolve this dispute in a timely manner, on April 23, 2007, Developers tendered \$4,134,375 (270 acres x 2,000 gal/acre x (\$2,450/320 gal))

to LPSCo for the Phase II capacity payment, calculated in accordance with LPSCo's new hook-up fee tariff, which became effective on April 1, 2008. On April 29, 2008, LPSCo rejected the tender.

25. LPSCo's refusal to provide will serve letters for Phase II of Estrella Falls has caused and will continue to cause substantial damage to Westcor/Globe. Damages to Westcor/Globe caused by delay in construction of the Power Center include, but are not limited to, difficulty securing tenant agreements for Power Center space because of the lack of confirmed wastewater service, and increased financing costs because LPSCo's refusal to commit to provide wastewater treatment service has resulted in Westcor/Globe's lenders charging a higher rate of interest on the subject construction loan.

26. If LPSCo does not provide the Phase II will-serve letter by August 31, 2008, Developers may not be able to meet their obligations to the remaining Power Center tenants. In that case, Developers would incur significant, continuing, consequential damages.

27. Even if construction commenced today, it would take approximately two years to open the Estrella Falls Mall. Westcor has entered into agreements with certain key tenants at the mall that provide for an opening date of fall 2010, which allows these tenants to be open for the 2010 Christmas/Holiday shopping season. Construction must begin this fall (2008) for the mall to open by this time.

28. Westcor's construction lenders require water and wastewater will-serve letters before they will provide the funds required to begin construction of the mall. In order to open the Estrella Falls Mall by fall 2010, Westcor must receive water and wastewater will-serve letters by August 31, 2008.

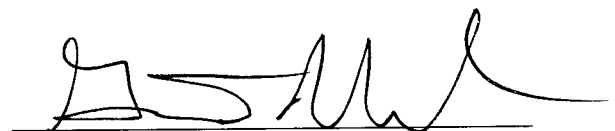
29. If construction does not begin this fall (2008), Westcor may lose key tenants, thereby causing enormous monetary losses for Westcor/Globe. In addition, Westcor/Globe has already incurred damage as a result of the delay in commencement of

construction of the Estrella Falls Mall because Westcor/Globe will not have lease payments from any mall tenants to partially offset Improvement District Assessment Payments which begin in January 2010.

30. The Phase II Facilities, including the regional mall, will provide employment for approximately 3000 people. Further delay in the completion of the remainder of the Power Center and the Estrella Falls Mall will cause a corresponding delay in the availability of these jobs, which will cause additional harm to the local economy.

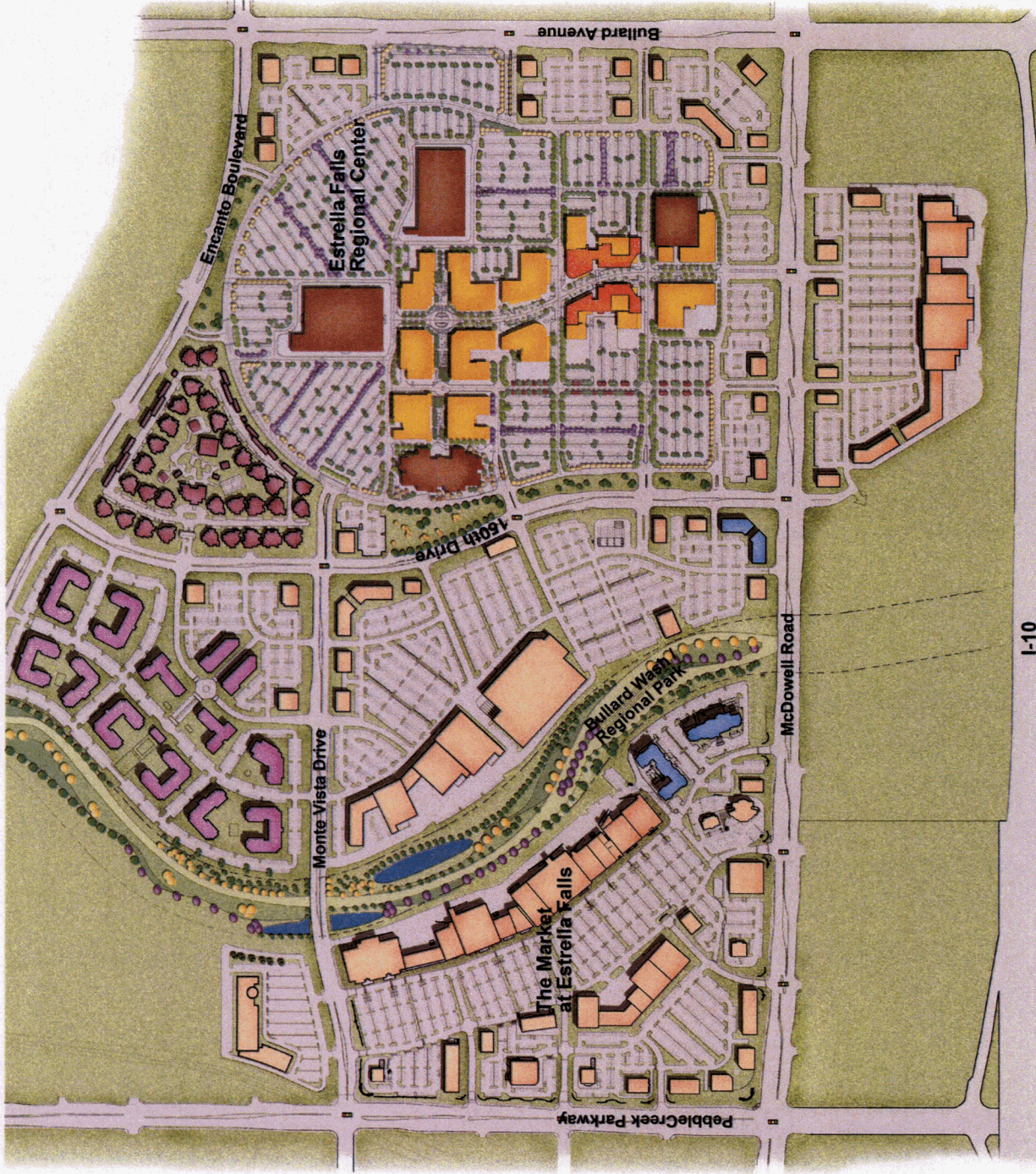
31. Further delay in the completion of the remainder of the Power Center or the Estrella Falls Mall will also result in substantial harm to the City of Goodyear in the form of lost sales-tax revenues. On behalf of the City of Goodyear, Applied Economics determined that "[o]nce completed, the project could generate an estimated \$6 million to \$7 million in annual sales tax revenues to the city during the incentive period and twice that much once the reimbursement amount had been paid in full."

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of May, 2008.

A handwritten signature in black ink, appearing to read 'Garrett Newland', written over a horizontal line.

Garrett Newland

EXHIBIT 1



ESTRELLA FALLS

Estrella Falls Site Data	
The Market at Estrella Falls	63 acres
500,000 sq.ft. Opening Fall 2008	
Estrella Falls Regional Center	105 acres
1,200,000 sq.ft. Opening Fall 2010	
Peripheral Retail/Mixed Use	162 acres
TOTAL	330 acres

Key Legend

	Retail
	Estrella Falls Regional Center
	Office/ Commercial
	Multifamily/Condominium Residential
	Hotel

EXHIBIT 2

ESTRELLA FALLS

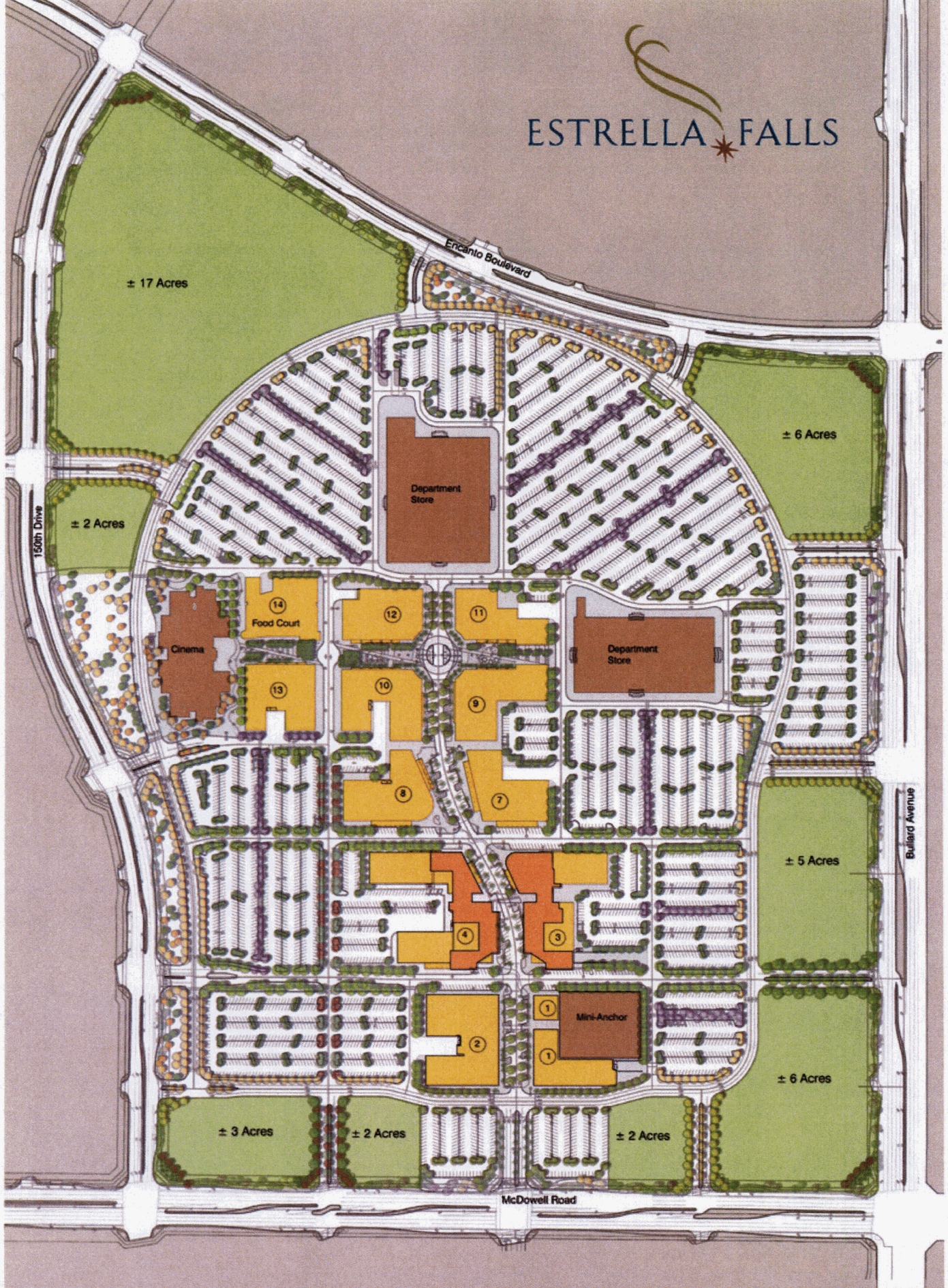


EXHIBIT 3

February 14, 2008

Market at Estrella Falls LLC
c/o Westcor
11411 N. Tatum Boulevard
Phoenix, AZ 85028

Attention: Mr. Rob Bassett, Assistant Vice President Development

**RE: Will Serve Letter for The Market at Estrella Falls
Northeast corner of Pebble Creek and McDowell Roads (Approximately 66 acres)
Our File No. 8600-25-08-05**

Dear Mr. Bassett,

This letter is to verify that the Arizona Corporation Commission (ACC) has issued Litchfield Park Service Company (LPSCO) a Certificate of Convenience & Necessity giving LPSCO the authority to provide water and wastewater service to the above-mentioned property. Facilities will be constructed pursuant to LPSCO's requirements and in accordance with all applicable regulatory requirements and standards.

Water service is available for the entire development.

Wastewater service is available for approximately 30 acres or 60,000 gallons of wastewater flow per day for that part of the development backing onto Bullard Wash/Park as per the buildings identified on Exhibit A and Exhibit B of this letter. Domestic water meters and wastewater service for the balance of the development will be available contingent upon Westcor meeting all of the terms and conditions set forth in the Commercial Wastewater Facilities Agreement between LPSCO and Globe Land Investors, LLC dated June 1, 2001 for Phase II capacity.

General Conditions

Service to this development will be contingent upon the developer entering into line extension agreements with LPSCO. Water and wastewater master plans will need to be submitted and approved by LPSCO prior to service. The water and wastewater master plans will outline the required facilities to be installed to serve your development. Operation and maintenance of the water distribution system and wastewater collection system will be in accordance with LPSCO's procedures and standard practices. LPSCO will provide service by the terms and conditions of the line extension agreement, the current regulations of the ACC, Arizona Department of Environmental Quality (ADEQ), and any other regulatory agencies having jurisdiction.

If there are any questions with respect to this Will Serve letter, please contact the undersigned at your convenience.

Yours very truly,

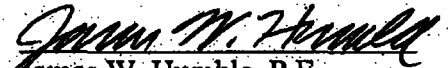

James W. Humble, P.E.
Development Services Manager
Litchfield Park Service Company

EXHIBIT 4



GLOBE CORPORATION

GEORGE F. GETZ
PRESIDENT

February 4, 2008

Mr. Bob Dodds
Manager of Infrastructure Division
Algonquin Water Services
12725 W. Indian School Road
Avondale, AZ 85323

via Hand Delivery and Email

Dear Mr. Dodds:

Enclosed please find a check from Westcor for \$2,538,000 for Phase II Wastewater Facilities payment pursuant to the Commercial Wastewater Facilities Agreement dated June 1, 2001. As you are aware, Algonquin, Globe and Westcor have been in recent discussions as to whether or not this amount represents payment-in-full for Phase II treatment capacity under the agreement. Submitting this payment is not intended to quell these continued discussions and is not a waiver of any and all legal rights of Globe or Westcor. You are also aware that we are currently constructing the 66-acre The Market at Estrella Falls development. To the degree that a portion of this development is in Phase II of the agreement, we thought it appropriate to make this payment to you at this time.

Sincerely,

David Scholl
Sr. Vice President, Development, Westcor
Globe Land Investors, LLC

George Getz
President, Globe Corporation
Managing Member

Cc: Ian Robertson, Algonquin via email

Ed Pamatat, Algonquin via email

Craig Marks, Craig A. Marks PLC
Glen Hallman, Gallagher & Kennedy

No. 20396

DATE: 01-FEB-08 CUST. ACCT. NO.

VENDOR NAME Litchfield Park Servic VENDOR NO. 25041

INVOICE NO. / DESCRIPTION	INVOICE DATE	DISCOUNT AMOUNT	NET AMOUNT
013108/3580 Wastewater Treatment Capacity	31-JAN-08	0.00	2,588,760.00
PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT.	Thank You	0.00	2,588,760.00

Westcor/Goodyear LLC

11411 North Tatum Blvd.
Phoenix, AZ 85028

BANK ONE, ARIZONA, NA 91-2
PO Box 29549 1221
Phoenix, AZ 85038

No. 20396

CHECK DATE	CHECK NUMBER	CHECK AMOUNT
01-FEB-08	20396	**2,588,760.00

PAY	Two Million Five Hundred Eighty-Eight Thousand Seven Hundred Sixty Dollars And 00 Cents*****
-----	--

TO Litchfield Park Service Company
THE 12725 W Indian School Rd Ste D101
ORDER Avondale, AZ 85323
OF United States

Michael Zand
AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

HOLD FOR SECURITY TITLE

When Recorded, return to:
SunCor Development Company
3838 N. Central, Suite 1500
Phoenix, AZ 85012
Attn: Jeffrey V. Romaine

15-23384 pl

OK
request
remitance
advice

Goodbye Water & Sewer: 3580:
02.06.07: Treatment Capacity
\$ 2,588,760.00

MARICOPA COUNTY RECORDER
HELEN PURCELL

2001-0525587 06/15/2001 04:09

OSCAR 2 OF 138

COMMERCIAL WASTEWATER FACILITIES AGREEMENT

BETWEEN

LITCHFIELD PARK SERVICE COMPANY

AND

GLOBE LAND INVESTORS, L.L.C.

Dated June 1, 2001

60001.00000.35

EXHIBIT 5

Mcright, Christine

From: Bassett, Rob
Sent: Wednesday, January 16, 2008 3:55 PM
To: ggetz@globecor.com; molsen@globecor.com; rcarter@globecor.com
Cc: Scholl, Dave; Newland, Garrett; Mcright, Christine; Craig Marks
Subject: FW: Follow up to our conference call

Please see the below response from Bob Dodds.

From: Bob Dodds [mailto:Bob.Dodds@algonquinpower.com]
Sent: Wednesday, January 16, 2008 3:51 PM
To: Bassett, Rob
Cc: Mcright, Christine; Newland, Garrett; Scholl, Dave; ian.robertson@algonquinpower.com; Ed Pamatat; chris.jarratt@algonquinpower.com; dave.kerr@algonquinpower.com; Greg Sorensen
Subject: RE: Follow up to our conference call

January 16, 2008

Rob

I believe we committed to providing you a response this week by way of a spread sheet setting out examples of Westcor's probable cash outlays, the amounts and timing of probable return to Westcor through refunds of capital advances and recovery to Westcor of moneys collected from other future developers as their pro-rata share of the costs of assets that Westcor may have fronted (i.e., for any excess treatment capacity since a 1 mgd increment of expansion is about the most efficient minimum increment). Our intent is to show Westcor's probable maximum exposure for the purpose of providing the "with certainty" estimate that Westcor seeks while concurrently attempting to quantify some information respecting the offsets Westcor is likely to experience so it can calculate a probable net final cost.

While we understand that the current costs may look different from those previously experienced (i.e. the \$4.70/gallon capacity figure used for Phase 1 in the 2001 Master Agreements adjusted for inflation), it bears mentioning that the current requirement for 673,000 gallon (Carter Burgess data for Phase 1 and Phase 2) block of capacity requirement exceeds the capacity available at the current plant and hence necessitates construction of new capacity for Westcor's needs.

The reality is that the cost to construct new capacity is estimated to be in the \$20 gallon/day range at the 1 mgd practical minimum increment and that needs to be the basis for a "with certainty" calculation. There is potentially some flexibility regarding when and how that amount is funded (e.g., posting some collateral in the form of a letter of credit to secure the payments). However, we estimate that you might reasonably expect recovery or offset from the utility and other developers in respect of various co-participation for an aggregate recovery amount of 40% to 50%, which reduces your initial capital outlay considerably.

We are working on that spread sheet now that more clearly sets out some of these amounts.

We committed to providing a more firm cost estimate for the 1 mgd capacity increment by the end of January that will be used either in the LXA's or as amendments to the Master Agreement. It is understood and appreciated that Westcor does not want an open ended liability on its books but on the other hand, LPSCO cannot assume construction build out and cost risk.

Regards

5/14/2008

Bob Dodds
Manager of Infrastructure Division
Direct Line (623)935-9429
Cell Phone (623)337-2210
Fax (623)935-1020
email: bob.dodds@algonquinwater.com

From: Bassett, Rob [mailto:RBassett@westcor.com]
Sent: January 15, 2008 2:57 PM
To: Bob Dodds
Cc: Mcright, Christine; Newland, Garrett; Scholl, Dave
Subject: Follow up to our conference call

Hi Bob,

As a follow up to our meeting last Wednesday, your team stated that we would be provided detailed cost estimates for the various options to add additional treatment capacity for Phase II flows under the Master Wastewater Facilities Agreement by this past Monday.

Please let us know the status of these follow up items.

Thank you,

Rob Bassett
Assistant Vice President, Development

Westcor
11411 N Tatum Blvd.
Phoenix, AZ 85028

P: 602-953-6205
F: 602-494-6186

5/14/2008

EXHIBIT 6


[The Fund](#)
[The Business](#)
[Financial Reports](#)
[News Room](#)
[Contact](#)

Algonquin Power Business Segments Segments

- **Hydroelectric**
- **Cogeneration**
- **Alternative Fuels**

[Infrastructure](#)

Facilities

- **By Business Segment**
- **By Region**
- **Alphabetical**

[Interactive Map](#)
[Power Purchase Agreements](#)

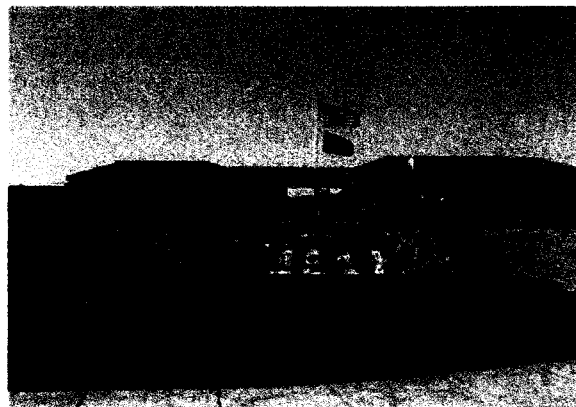
Litchfield Park Service Company

Business Segment:
Infrastructure

Location:
Near Goodyear, Arizona

Services:
Water Distribution and Water
Reclamation

Connections:
Distribution - 14,355
Reclamation - 15,302



Litchfield Park Service Company ("LPSCo") is a water distribution and wastewater reclamation utility located in the West Valley of Maricopa County, 15 miles west of Phoenix, Arizona whose service area includes sections of the Cities of Goodyear, Avondale and Litchfield Park, Arizona. According to the 2000 census data, Maricopa County is the fastest growing county in the United States. LPSCo presently serves approximately 15,000 water and 15,000 wastewater customers.

The LPSCo water infrastructure includes a total of eight active wells and a 6.3 million gallon reservoir which provides water to the current customer base through a single pressure zone. LPSCo constructed and commissioned a 4.2 million gallon per day water reclamation facility. This facility operates at 40% capacity and supplies Class "A+" reclaimed water to a number of local golf courses in the area.

[Back to Infrastructure Facilities List](#)

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Algonquin Power Income Fund, 2845 Bristol Circle, Oakville, ON Canada, L6H 7H7
Tel: 905.465.4500 Fax: 905. 465.4514



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Litchfield Park Service Company

Location: Near Goodyear,
Arizona

Service: Water Distribution
and Water Reclamation

Connections: Distribution -
14,355
Reclamation - 15,302

Litchfield Park Service Company ("LPSCo") is a water distribution and wastewater reclamation utility located in the West Valley of Maricopa County, 15 miles west of Phoenix, Arizona whose service area includes sections of the Cities of Goodyear, Avondale and Litchfield Park, Arizona. According to the 2000 census data, Maricopa County is the fastest growing county in the United States. LPSCo presently serves approximately 14,355 water and 15,302 wastewater customers.

The LPSCo water infrastructure includes a total of eight active wells and a 6.3 million gallon reservoir which provides water to the current customer base through a single pressure zone. LPSCo constructed and commissioned a 4.2 million gallon per day water reclamation facility. This facility operates at 40% capacity and supplies Class "A+" reclaimed water to a number of local golf courses in the area.

Links

- Litchfield Park Service Company is authorized to operate as per the ADEQ: Arizona Department of Environmental Quality - <http://www.azdeq.gov/>
- New Service Instructions and Form - [LPSCo Service Agreement](#)
- Surepay Instructions and Form - [Surepay Program Instructions and Form](#)
- Mailing Address Change Form - [Mailing Address Change Form](#)
- Termination of Service Form - [Termination of Service Form](#)

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In This Section

- » [Overview](#)
- » [FAQs](#)
- » [News](#)
- » [Rates & Tariffs \(PDF\)](#)
- » [List all facilities](#)

Contact Information

Litchfield Park Service Company
12725 West Indian School Road,
Suite D101
Avondale, Arizona
85392.

Phone: (623) 935-9367

Fax: (623) 935-1020

For emergencies that occur after business hours or on a weekend or holiday, please contact 623-935-3395.

EXHIBIT “B”

Form Will Serve Letter

_____, 2008

Market at Estrella Falls LLC
c/o Westcor
11411 N. Tatum Boulevard
Phoenix, AZ.85028

Attention: Mr. Rob Bassett, Assistant Vice President Development

**RE: Will Serve Letter for the Market at Estrella Falls
Phase II (Power Center and Regional Mall)
Our File No.**

Dear Mr. Bassett,

This letter is to verify that the Arizona Corporation Commission (ACC) has issued Litchfield Park Service Company (LPSCo) a Certificate of Convenience & Necessity giving LPSCo the authority to provide water and wastewater service to the above-mentioned property. Facilities will be constructed pursuant to LPSCo's requirements and in accordance with all applicable regulatory requirements and standards.

Water and wastewater service are available for the entire development.

General Conditions

Service to this development will be contingent upon the developer entering into line extension agreements with LPSCo. Water and Wastewater master plans will need to be submitted and approved by LPSCo prior to service. The water and wastewater master plans will outline the required facilities to be installed to serve your development. Operation and maintenance of the water distribution system and wastewater collection system will be in accordance with LPSCo's procedures and standard practices. LPSCo will provide service by the terms and conditions of the line extension agreement, the current regulations of the ACC, Arizona Department of Environmental Quality (ADEQ), and any other regulatory agencies having jurisdiction.

If there are any questions with respect to this Will Serve letter, please contact the undersigned at your convenience.

Yours very truly,

EXHIBIT “C”

(THE MARKET AT ESTRELLA FALLS- PHASE II ONSITE)
 This WASTEWATER FACILITIES AGREEMENT ("Agreement"),
 is entered into this ____ of _____, 2008, by and between
 LITCHFIELD PARK SERVICE COMPANY,
 an Arizona corporation ("Utility") and
 WESTCOR/GOODYEAR, L.L.C.,
 an Arizona limited liability company ("Developer")

RECITALS

WHEREAS, Developer proposes to construct 8-inch wastewater collection mains within Phase II of the Market at Estrella Falls commercial development ("Development") located on real property described on Exhibit "A" attached hereto that is within Utility's certificated area and desires Utility to provide certain utility services; and

WHEREAS, Utility owns and operates a wastewater utility system that authorizes Utility to provide public utility wastewater service to Development and desires to provide such services to Development; and

WHEREAS, Utility entered into that certain Commercial Wastewater Facilities Agreement with Globe Land Investors, L.L.C. ("Owner") dated June 1, 2001 (the "Master Agreement"); and

WHEREAS, Developer is a "Designated Builder" of the Wastewater Facilities contemplated by this Agreement, as provided in the Master Agreement, and

WHEREAS, Developer is willing to assume the obligation of Owner to reimburse Utility for certain Costs as set forth in the Master Agreement.

NOW THEREFORE; in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which the parties acknowledge, the parties agree as follows.

I. Wastewater Facilities

A. Construction of On-Site Wastewater Facilities by Developer.

1. Developer shall construct, or cause to be constructed, pursuant to this Agreement and the Master Agreement, certain on-site Wastewater Facilities ("Wastewater Facilities") necessary for Utility to provide wastewater utility service within Development, as more particularly described in Exhibit "B" attached hereto. Developer shall design and construct, or cause to be designed and constructed, all Wastewater Facilities to serve Development in accordance with the plans and specifications prepared by Developer and approved by Utility.

2. An itemized cost estimate of the Wastewater Facilities (including soft costs) is attached hereto as Exhibit "C" and represents the estimated cost of the Wastewater Facilities subject to amendment upon completion of construction and Utility receiving Developer's invoices for the Wastewater Facilities. This initial cost estimate for the Wastewater Facilities is \$ _____. Upon final construction and inspection by Utility of the Wastewater Facilities constructed and installed by Developer, in the manner described in Section I.B.6 and I.B.7 of the Master Agreement, Utility shall provide Developer with a written operational acceptance of the Wastewater Facilities, not to be unreasonably withheld or delayed. Developer shall provide Utility with accurate as-built maps (4-mil Mylar and AutoCAD format) showing the exact location of the Wastewater Facilities and the configuration of such facilities in Development. Accurate as-built maps must be received by Utility prior to final inspection of the Wastewater Facilities.

B. Transfer of Wastewater Facilities to Utility; Bill of Sale.

1. Upon written operational acceptance of the Wastewater Facilities by Utility and receipt by Utility of accurate as-builts in 4-mil Mylar and AutoCAD format for the Wastewater Facilities, Developer shall provide Utility with a Bill of Sale, which shall be accompanied by a detailed itemization of all amounts paid in connection with the construction of the Wastewater Facilities, together with satisfactory evidence of full and final payment of all amounts due and payable in connection with such construction. Utility will then promptly provide Developer written final acceptance of the Wastewater Facilities.

2. In the Bill of Sale, Developer shall warrant and represent for the completed parcel that (1) the Wastewater Facilities have been properly constructed and installed in accordance with the plans and specifications therefore; (2) the Wastewater Facilities are free and clear of all liens and encumbrances of any nature; and (3) the Wastewater Facilities have been inspected and approved by Utility and all governmental agencies having jurisdiction over the construction of the Wastewater Facilities. In addition, Developer shall warrant that the completed Wastewater Facilities for Development will be free from all defects and deficiencies in construction, materials and workmanship for a period of two years from the date of Utility's written acceptance. During the warranty period, Developer agrees to promptly undertake any actions required to repair or correct any defects or deficiencies in construction, materials or workmanship upon receipt of written notice thereof from Utility. The foregoing notwithstanding, upon the transfer of Wastewater Facilities, Developer shall retain no right, title or interest in any Wastewater Facilities.

C. Easements.

1. Developer shall provide to Utility satisfactory evidence of easements and right-of-way (public or private) over, under and across all portions of the main and pipeline routes of the Wastewater Facilities as may be necessary in order to (1) serve each parcel or lot within Development and (2) operate, maintain and repair the Wastewater Facilities. All easements and rights of way shall be free of obstacles, which may interfere with Utility's use, operation, and maintenance of the Wastewater Facilities.

D. Utility's Right to Inspect During Construction.

1. Utility shall have the right at all times during construction to inspect the progress of the work performed and to determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties. Utility will use its best efforts to inspect the progress of the work performed and determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties, within forty-eight (48) hours after Developer requests an inspection (excluding Saturdays, Sundays, and holidays). Failure to inspect within forty-eight (48) hours shall not constitute a waiver of Utility's right to inspect the work performed and determine whether the work is being performed in accordance with the plans and Utility Specifications and all agreements between the parties. If, in Utility's reasonable opinion, the work has not been, or is not being, performed in a good and workmanlike manner and in accordance with the plans and Utility specifications and applicable governmental requirements, Utility shall have the right to require Developer to correct any defects by providing written notice to Developer describing the defect to be remedied. Complete and satisfactory completion of the Wastewater Facilities in accordance with the plan and Utility's specifications and applicable governmental requirements is a condition precedent to Utility's acceptance of the transfer of the Wastewater Facilities and the furnishing of wastewater utility service to Development, which acceptance shall not be unreasonably withheld or delayed.

E. Jurisdiction of the Arizona Corporation Commission.

1. All rights and obligations hereunder including those regarding wastewater utility service to Development, shall be subject to the rules and regulations of the Arizona Corporation Commission ("Commission") and all applicable rates, fees, charges, and tariffs of Utility as approved by the Commission now or as they may be changed in the future.

F. Survey.

1. In the event of a dispute over the location of an easement, or a discrepancy from the recorded plat, Utility may require Developer to conduct a survey at Developer's cost, but only to the extent necessary to identify the legal description or to resolve the discrepancy.

G. Oversizing.

1. If requested by Utility before approval of the engineering plans, as provided in Section I.A of this Agreement, Developer shall "oversize" the Wastewater Facilities as specified by Utility. Utility shall reimburse Developer for the amount by which the material prices of the oversized Wastewater Facilities exceed the actual material prices of these Wastewater Facilities prior to "oversizing". Payment for oversizing will be made by Utility to Developer within thirty (30) days of written notice to Utility after Utility's Final Acceptance of said Wastewater Facilities.

II. Non-Refundable Contribution in Aid of Construction for Wastewater Facilities; Overhead Costs; Cost Changes.

A. Refund Provisions.

1. The amounts set forth in Exhibit "C" hereto representing the cost of the Wastewater Facilities constructed and installed under this Agreement are a contribution in aid of construction and are non-refundable to Developer.

B. Overhead Costs.

1. Under Section I.B.13 of the Master Agreement, Utility is entitled to reimbursement from Developer for fees and expenses incurred by Utility in connection with overhead costs, which shall include inspection and testing of the Wastewater Facilities ("Overhead Costs"). Utility's reimbursement entitlement for Overhead Costs is equal to 3% of the Wastewater Facilities costs. The Overhead Costs to be reimbursed by Developer will be based on invoices provided by Developer and approved by Utility under Section I.A.2, above. Utility will then obtain reimbursement for Overhead Costs by submitting an invoice to Developer. Developer's reimbursement payment will be due within 30 days of the receipt of the invoice for Overhead Costs. For purposes of this Agreement, the cost estimate for Overhead Costs is \$ _____ [3% of \$ _____].

C. Changes to Construction Costs; Unforeseen Conditions.

1. The parties acknowledge that the costs set forth in Exhibit "C" hereto are based on specifications in the plans for the improvement for Development. If adjustments are made to, the Wastewater Facilities cost due to changes in the final water plans, changes in the cost of the final installed facilities or actual invoices the final amount representing the installed and constructed Wastewater Facilities contribution shall be adjusted accordingly. If during construction, difficult trenching or other unforeseen construction conditions are encountered or any increase in the cost of construction caused by circumstances that could not have been reasonably known or are beyond the control of the parties hereto, the amount set forth in Exhibit "C" shall be adjusted to reflect the actual total cost of construction together with any appropriate engineering fees, overheads, and attorneys' fees incurred as a result of the unforeseen construction conditions and such final amount shall be made as an adjustment to Exhibit "C".

III. General Provisions

A. Phase II Capacity Cost Payment

1. The parties acknowledge that the Master Agreement requires Developer to pay Utility a Phase II Capacity Payment, and that the amount of this payment is in dispute and the subject of existing litigation. When the amount of that payment is determined, either as a result of that litigation or by mutual agreement of the parties, Developer will promptly pay or cause to be paid to Utility the Phase II Capacity Payment.

B. Non-Liability Loss.

1. Developer will indemnify and hold Utility, its officers, directors, agents, and employees harmless from and against any and all claims, damages, costs and expenses, including penalties and assessments, attorneys' fees and court costs, to which they or any of them may be subjected by reason of injury, death, loss, claim, penalty, assessment or damage caused or contributed to by the active or passive negligence of Developer, its agents, servants, employees, contractors or subcontractors in the execution of the work or in connection therewith; and in case any suit or other proceeding shall be brought on account thereof, Developer will assume the defense at Developer's expense and will pay all judgments rendered therein. The foregoing indemnity does not cover any negligent or wrongful acts of Utility, its officers, directors, agents or employees.

C. Uncontrollable Forces.

1. Utility shall not be liable to Developer, nor to Developer's agents, nor to any other person, firm or corporation whatsoever, for or on account of any interruption or failure in the collection of wastewater in accordance with this Agreement, or for or on account of any loss, injury or damage occasioned hereby where such interruption or failure, either directly or indirectly, is caused by or results from any of the following; fire, lightning, flood, windstorm, Act of God, invasion or force majeure; compliance with any orders, rules, regulations or determination, whether valid or invalid, of any governmental authority or status or ownership of wastewater and wastewater regulations adopted by the Commission; breakdown, repair or replacement of any well, machinery, equipment, transmission line, pipeline or other facility; shortage of any fuel, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Utility or not reasonably within its control; any action or omission on the part of Utility which is not grossly negligent or is the result of willful misconduct.

D. Binding Effect; Assignments.

1. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. Without Utility's written consent, which consent may not be unreasonably withheld, delayed or conditioned, Developer may not assign its rights, obligations and interest in this Agreement. Notwithstanding the preceding sentence, Developer, upon prior written notice to Utility, but without the consent of Utility, may assign its rights under this agreement to an entity that controls, is controlled by or is under common control with Westcor/Goodyear LLC or The Market at Estrella Falls, LLC. Upon any assignment by Developer in accordance with this Section D.1., Developer shall be released from any and all liabilities and obligations under this Agreement that first arise after the date of any such assignment.

2. Utility reserves the right to deem this Agreement null and void if Developer does not begin construction within two years from the date of this Agreement. If Developer has not started construction within two years from the date of this Agreement, Developer may issue a written request to Utility for an extension of this Agreement. Utility's response to said request for extension will not be unreasonably delayed. If Utility deems the Agreement null and void,

Utility will send written notice of cancellation of Agreement to Developer via certified mail to the address provided below.

E. Notices.

1. Any notice required or permitted to be given under this Agreement shall be deemed delivered and be effective on the date physically delivered to the party of whom notice is being provided or two (2) calendar days following the date on which the notice is deposited in the United States Mail, postage prepaid, certified delivery, and address to the party to whom notice is being provided as follows:

Utility:
Litchfield Park Service Company
12725 W. Indian School Rd, Suite D101
Avondale, Arizona 85323
Attn: James W. Humble; Development Services Manager

Developer:
Westcor/Goodyear, L.L.C.
11411 N. Tatum Blvd.
Phoenix, Arizona 85028
Attn: Garrett Newland: Vice President of Development

2. Each party shall promptly provide written notice to the other party, as provided herein, of any subsequent change of address, and the failure to do so shall preclude any subsequent claim that notice was improperly given hereunder.

F. Warranties. Utility warrants to Developer that:

1. With the exception of Developer's obligation to pay Utility the Phase II Capacity Payment discussed above in Section III.A.1, all of Developer's conditions set forth in the Master Agreement have been satisfied and Utility is obligated to provide wastewater collection and treatment service to Development.

2. Subject to construction of the Wastewater Facilities contemplated by this Agreement and the Water and Wastewater System Master Plan dated April 2006 (attached hereto as Exhibit "D"), the wastewater utility system owned and operated by Utility and referred to in this Agreement contains or will contain sufficient collection and treatment capacity to provide adequate wastewater service to Development.

G. No Agency Relationship or Third Party Beneficiaries.

1. Nothing set forth herein shall imply any agency or partnership between Utility and Developer, nor shall third persons who are not parties to this Agreement, including but not limited to those who are, purchasers of real property from Developer, be entitled to claim that they are third party beneficiaries of the rights and obligations set forth hereunder.

H. Miscellaneous.

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement, together with the attachments hereto, sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between them. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by the parties. Time is of the essence of this Agreement and each and every term contained herein. Each party irrevocably warrants to the other that it has all applicable power and authority, actual representative or otherwise, to enter into this Agreement and bind each party's performance hereunder.

I. Authority to Execute and Perform

1. Each party represents and warrants to the other party that it has been duly authorized to execute and perform this Agreement and all of its duties and obligations hereunder.

END OF AGREEMENT

LXA # _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized individuals in the day, month, and year first above written.

LITCHFIELD PARK SERVICE COMPANY,
an Arizona corporation

WESTCOR/GOODYEAR, L.L.C., an
Arizona limited liability company

By: The Westcor Company II Limited
Partnership, an Arizona limited
partnership, its managing member

By: Macerich TWC II Corp.,
a Delaware corporation,
its general partner

By: _____
Robert Dodds
President

By: _____
Charlie McPhee
Senior Vice President

LXA # _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Robert Dodds, President of Litchfield Park Service Company, an Arizona corporation, on behalf of the corporation.

Name

Title

My Commission expires:

LXA # _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Charlie McPhee, Senior Vice President, Macerich TWC II Corp., a Delaware corporation, on behalf of the corporation.

Name

Title

My Commission expires:

EXHIBIT “D”

(THE MARKET AT ESTRELLA FALLS – PHASE II ONSITE)
This WATER FACILITIES AGREEMENT ("Agreement"),
is entered into this _____ of _____, 2008, by and between
LITCHFIELD PARK SERVICE COMPANY,
an Arizona corporation ("Utility") and
WESTCOR/GOODYEAR L.L.C.,
an Arizona limited liability company ("Developer")

RECITALS

WHEREAS, Developer proposes to construct 8-inch and 12-inch waterlines within Phase II of the Market at Estrella Falls development ("Development") located on real property described on Exhibit "A" attached hereto that is within Utility's certificated area and desires Utility to provide certain utility services; and

WHEREAS, Utility owns and operates a water utility system that authorizes Utility to provide public utility water service to Development and desires to provide such services to Development; and

WHEREAS, Utility entered into that certain Commercial Water Facilities Agreement with Globe Land Investors, L.L.C. ("Owner") dated June 1, 2001 (the "Master Agreement"); and

WHEREAS, Developer is a "Designated Builder" of the Water Facilities contemplated by this Agreement, as provided in the Master Agreement; and

WHEREAS Developer is willing to assume the obligation of Owner to reimburse Utility for Overhead Costs as set forth in the Master Agreement.

NOW THEREFORE; in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which the parties acknowledge, the parties agree as follows.

I. Water Facilities

A. Construction of On-Site Water Facilities by Developer.

1. Developer shall construct, or cause to be constructed, pursuant to this Agreement and Section I.A of the Master Agreement, certain on-site water distribution facilities ("Water Facilities") necessary for Utility to provide water utility service within Development, as more particularly described in Exhibit "B" attached hereto. Developer shall design and construct, or cause to be designed and constructed, all Water Facilities to serve Development in accordance with the plans and specifications prepared by Developer and approved by Utility.

Initial _____

2. An itemized cost estimate of the Water Facilities (including soft costs) is attached hereto as Exhibit "C" and represents the estimated cost of the Water Facilities subject to amendment upon completion of construction and Utility receiving Developer's invoices for the Water Facilities. This initial cost estimate for the Water Facilities is \$ _____. Upon final construction and inspection by Utility of the Water Facilities constructed and installed by Developer, in the manner described in Section I.B.8 and I.B.9 of the Master Agreement, Utility shall provide Developer with a written operational acceptance of the Water Facilities, not to be unreasonably withheld or delayed. Developer shall provide Utility with accurate as-built maps (4-mil Mylar and AutoCAD format) showing the exact location of the Water Facilities and the configuration of such facilities in Development. Accurate as-built maps must be received by Utility prior to final inspection of the Water Facilities.

B. Transfer of Water Facilities to Utility; Bill of Sale.

1. Upon written operational acceptance of the Water Facilities by Utility and receipt by Utility of accurate as-builts in 4-mil Mylar and AutoCAD format for the Water Facilities, Developer shall provide Utility with a Bill of Sale, which shall be accompanied by a detailed itemization of all amounts paid in connection with the construction of the Water Facilities, together with satisfactory evidence of full and final payment of all amounts due and payable in connection with such construction. Utility will then promptly provide Developer written final acceptance of the Water Facilities.

2. In the Bill of Sale, Developer shall warrant and represent for the completed parcel that (1) the Water Facilities have been properly constructed and installed in accordance with the plans and specifications therefore; (2) the Water Facilities are free and clear of all liens and encumbrances of any nature; and (3) the Water Facilities have been inspected and approved by Utility and all governmental agencies having jurisdiction over the construction of the Water Facilities. In addition, Developer shall warrant that the completed Water Facilities for Development will be free from all defects and deficiencies in construction, materials and workmanship for a period of two years from the date of Utility's written acceptance. During the warranty period, Developer agrees to promptly undertake any actions required to repair or correct any defects or deficiencies in construction, materials or workmanship upon receipt of written notice thereof from Utility. The foregoing notwithstanding, upon the transfer of Water Facilities, Developer shall retain no right, title or interest in any Water Facilities.

C. Easements.

1. Developer shall provide to Utility satisfactory evidence of easements and right-of-way (public or private) over, under and across all portions of the main and pipeline routes of the Water Facilities as may be necessary in order to (1) serve each parcel or lot within Development and (2) operate, maintain and repair the Water Facilities. All easements and rights of way shall be free of obstacles, which may interfere with Utility's use, operation, and maintenance of the Water Facilities.

D. Utility's Right to Inspect During Construction.

1. Utility shall have the right at all times during construction to inspect the progress of the work performed and to determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties. Utility will use its best efforts to inspect the progress of the work performed and determine whether the work is being performed in accordance with the plans and Utility specifications and all agreements between the parties, within forty-eight (48) hours after Developer requests an inspection (excluding Saturdays, Sundays, and holidays). Failure to inspect within forty-eight (48) hours shall not constitute a waiver of Utility's right to inspect the work performed and determine whether the work is being performed in accordance with the plans and Utility Specifications and all agreements between the parties. If, in Utility's reasonable opinion, the work has not been, or is not being, performed in a good and workmanlike manner and in accordance with the plans and Utility specifications and applicable governmental requirements, Utility shall have the right to require Developer to correct any defects by providing written notice to Developer describing the defect to be remedied. Complete and satisfactory completion of the Water Facilities in accordance with the plan and Utility's specifications and applicable governmental requirements is a condition precedent to Utility's acceptance of the transfer of the Water Facilities and the furnishing of water utility service to Development, which acceptance shall not be unreasonably withheld or delayed.

E. Jurisdiction of the Arizona Corporation Commission.

1. All rights and obligations hereunder including those regarding water utility service to Development, shall be subject to the rules and regulations of the Arizona Corporation Commission ("Commission") and all applicable rates, fees, charges, and tariffs of Utility as approved by the Commission now or as they may be changed in the future. However, the provisions for refunds to Developer shall be as set forth herein and in the Master Agreement or any Amendment to the Master Agreement. Utility shall have the unilateral right to apply to the Commission for changes or modifications in any of its rates or charges and to alter or amend its terms and conditions of service and to otherwise charge for its services as may be permitted by the Commission.

F. Survey.

1. In the event of a dispute over the location of an easement, or a discrepancy from the recorded plat, Utility may require Developer to conduct a survey at Developer's cost, but only to the extent necessary to identify the legal description or to resolve the discrepancy.

G. Oversizing.

1. If requested by Utility before approval of the engineering plans, as provided in Section I.A. of this Agreement, Developer shall "oversize" the Water Facilities as specified by Utility. Utility shall reimburse Developer for the amount by which the material prices of the oversized Water Facilities exceed the actual material prices of these Water Facilities prior to "oversizing". Payment for oversizing will be made by Utility to Developer within thirty (30) days of written notice to Utility after Utility's Final Acceptance of said Water Facilities.

II. Advances in Aid of Construction; Refunds; Overhead Costs; Taxes**A. Refund Provisions.**

1. The amounts set forth in Exhibit "C" hereto representing the cost of the Water Facilities constructed and installed under this Agreement shall be considered an advance in aid of construction ("Advance") and shall be subject to refund. The Advance shall be repaid to Developer through annual refund payments (made without interest to Developer) in the amount of ten percent (10%) of Utility's total gross annual revenue (exclusive of revenue taxes, connect and reconnect charges, bad check charges and other similar non-service charges) earned from water sales to each bona fide customer whose customer service line is connected to the Water Facilities constructed under this Agreement. Such annual payments shall be made by Utility on or before August 31st of each year covering refunds due from water revenues received during the preceding July 1 to June 30 period. Such annual payments shall continue to be made by Utility to Developer until such time as Developer receives the full amount of the Advance or for a period of fifteen (15) years from the date on which Utility has issued its written notice of operational acceptance, whichever occurs first. If the entire Advance has not been refunded to Developer at the end of such fifteen (15) year period, Utility's obligation to make such refund payments shall cease and the portion of the advance that was not so refunded shall become nonrefundable, in which case the balance not refunded shall be entered as a contribution in aid of construction in the accounts of Utility. Utility reserves the right to accelerate the repayment of refunds owed to Developer. Utility and Developer agree that throughout the term of this Agreement, Utility's refund obligation is executory in nature and Developer's right to receive refunds from Utility exists only in accordance with the terms of the Agreement and the Master Agreement, or any Amendment to the Master Agreement, not otherwise. The aggregate of refunds hereunder shall in no event exceed the total of the Advance. Utility shall have the right to set off refunds owing to Developer against any amount owing by Developer to Utility.

B. Overhead Costs.

1. Under Section I.B.14 of the Master Agreement, Utility is entitled to reimbursement from Developer for fees and expenses incurred by Utility in connection with overhead costs, which shall include inspection and testing of the Water Facilities ("Overhead Costs"). Utility's reimbursement entitlement for Overhead Costs is equal to 3% of the remaining Water Facilities costs. The Overhead Costs to be reimbursed by Developer will be based on invoices provided by Developer and approved by Utility under Section I.A.2 above. Utility will then obtain reimbursement for Overhead Costs by submitting an invoice to Developer. Developer's reimbursement payment will be due within 30 days of the receipt of the invoice for Overhead Costs. For purposes of this Agreement, the cost estimate for Overhead Costs is \$ _____ [3% of \$ _____].

C. Changes to Construction Costs; Unforeseen Conditions.

1. The parties acknowledge that the costs set forth in Exhibit "C" hereto are based on specifications in the plans for the improvement for Development. If adjustments are made to, the Water Facilities cost due to changes in the final water plans, changes in the cost of the final installed facilities or actual invoices the final amount representing the installed and constructed Water Facilities contribution shall be adjusted accordingly. If during construction, difficult trenching or other unforeseen construction conditions are encountered or any increase in the cost of construction caused by circumstances that could not have been reasonably known or are beyond the control of the parties hereto, the amount set forth in Exhibit "C" shall be adjusted to reflect the actual total cost of construction together with any appropriate engineering fees, overheads, and attorneys' fees incurred as a result of the unforeseen construction conditions and such final amount shall be made as an adjustment to Exhibit "C".

D. New Water Meters.

1. Utility shall not be obligated to set any water meter within Development until Utility has issued Operational Acceptance of the associated Water Facilities.

E. Water Meter Deposit Refunds.

1. The amount representing Tariff Meter Charge at the time of payment, installed and activated under this Agreement shall be considered reimbursable deposits. Utility shall repay such water meter charge to Developer, through annual refund payments (made without interest) each in the amount of ten percent (10%) of such charge. Utility shall make such payments on or before November 30 of each year. The aggregate refunds hereunder shall in no event exceed the total of the water meter charge expended by Developer minus any refunds of meters already made.

III. General Provisions

A. Non-Liability Loss.

1. Utility's Water and Wastewater System Master Plan dated April 2006, attached hereto as Exhibit D, shows the water distribution system is designed to supply water at a minimum pressure of approximately 50 pounds per square inch (psi) during normal operating conditions. However, notwithstanding the foregoing, Utility makes no representation or warranty concerning the adequacy of Utility services it provides for the protection of Development. Utility's obligation is to supply water at such pressures as may be available as a result of the normal operation of its system, at an amount not less than 20 psi pursuant to A.A.C. R14-2-407.E and Utility shall not be liable for injuries or damage resulting from causes beyond Utility's control. Pressures may drop to a minimum of 20 psi during fire flow events or other unusual demand conditions.

2. Developer will indemnify and hold Utility, its officers, directors, agents, and employees harmless from and against any and all claims, damages, costs and expenses, including penalties and assessments, attorneys' fees and court costs, to which they or any of them may be

subjected by reason of injury, death, loss, claim, penalty, assessment or damage caused or contributed to by the active or passive negligence of Developer, its agents, servants, employees, contractors or subcontractors in the execution of the work or in connection therewith; and in case any suit or other proceeding shall be brought on account thereof, Developer will assume the defense at Developer's expense and will pay all judgments rendered therein. The foregoing indemnity does not cover any negligent or wrongful acts of Utility, its officers, directors, agents or employees.

B. Uncontrollable Forces.

1. Utility shall not be liable to Developer, nor to Developer's agents, nor to any other person, firm or corporation whatsoever, for or on account of any interruption or failure in the delivery of water in accordance with this Agreement, or for or on account of any loss, injury or damage occasioned hereby where such interruption or failure, either directly or indirectly, is caused by or results from any of the following; fire, lightning, flood, windstorm, Act of God, invasion or force majeure; compliance with any orders, rules, regulations or determination, whether valid or invalid, of any governmental authority or status or ownership of water and water curtailment plans adopted by the Commission; breakdown, repair or replacement of any well, machinery, equipment, transmission line, pipeline or other facility; shortage of any fuel, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Utility or not reasonably within its control; any action or omission on the part of Utility which is not grossly negligent or is the result of willful misconduct.

C. Binding Effect; Assignments.

1. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. Without Utility's written consent, which consent may not be unreasonably withheld, delayed or conditions, Developer may not assign its rights, obligations and interest in this Agreement. Notwithstanding the preceding sentence, Developer – upon prior written notice to Utility, but without consent of Utility, may assign its rights under this agreement to an entity that controls, is controlled by or is under common control with Westcor/Goodyear LLC or The Market at Estrella Falls, LLC. Upon any assignment by Developer in accordance with this Section C.1, Developer shall be released from any and all liabilities and obligations under this Agreement that first arise after the date of any such assignment.

2. Utility reserves the right to deem this Agreement null and void if Developer does not begin construction within two years from the date of this Agreement. If Developer has not started construction within two years from the date of this Agreement, Developer may issue a written request to Utility for an extension of this Agreement. Utility's response to said request for extension will not be unreasonably delayed. If Utility deems the Agreement null and void, Utility will send written notice of cancellation of Agreement to Developer via certified mail to the address provided below.

D. Notices.

1. Any notice required or permitted to be given under this Agreement shall be deemed delivered and be effective on the date physically delivered to the party of whom notice is being provided or two (2) calendar days following the date on which the notice is deposited in the United States Mail, postage prepaid, certified delivery, and address to the party to whom notice is being provided as follows:

Utility:

Litchfield Park Service Company
12725 W. Indian School Rd, Suite DI01
Avondale, Arizona 85323
Attn: James W. Humble; Development Services Manager

Developer:

Westcor/Goodyear, L.L.C.
11411 N. Tatum Blvd.
Phoenix, Arizona 85028
Attn: Garrett Newland: Vice President of Development

2. Each party shall promptly provide written notice to the other party, as provided herein, of any subsequent change of address, and the failure to do so shall preclude any subsequent claim that notice was improperly given hereunder.

E. Warranties. Utility warrants to Developer that:

1. All conditions set forth in the Master Agreement, including the requirement to provide Utility with sufficient water supply, to Utility's obligations to provide water service to Development have been satisfied by Developer.

2. Subject to construction of Water Facilities contemplated by this Agreement and the Water and Wastewater System Master Plan, attached hereto as Exhibit D, the water utility system owned and operated by Utility and referred to in this Agreement contains sufficient capacity to provide adequate water service to Development.

F. No Agency Relationship or Third Party Beneficiaries.

1. Nothing set forth herein shall imply any agency or partnership between Utility and Developer, nor shall third persons who are not parties to this Agreement, including but not limited to those who are, purchasers of real property from Developer, be entitled to claim that they are third party beneficiaries of the rights and obligations set forth hereunder.

G. Miscellaneous.

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement, together with the attachments hereto, sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings and

agreements between them. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by the parties. Time is of the essence of this Agreement and each and every term contained herein. Each party irrevocably warrants to the other that it has all applicable power and authority, actual representative or otherwise, to enter into this Agreement and bind each party's performance hereunder.

H. Authority to Execute and Perform

1. Each party represents and warrants to the other party that it has been duly authorized to execute and perform this Agreement and all of its duties and obligations hereunder.

I. Approval of Agreement.

1. This Agreement shall be governed by the laws of the State of Arizona and shall be subject to such approvals of regulatory agencies as may be required under the said state. Without limiting the foregoing, this Agreement shall be submitted to the Utilities Division of the Arizona Corporation Commission for review, and shall be subject to that agency issuing its approval of the Agreement.

END OF AGREEMENT

LXA # _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized individuals in the day, month, and year first above written.

LITCHFIELD PARK SERVICE COMPANY,
an Arizona corporation

WESTCOR/GOODYEAR, L.L.C., an
Arizona limited liability company

By: The Westcor Company II Limited
Partnership, an Arizona limited
partnership, its managing member

By: Macerich TWC II Corp.,
a Delaware corporation,
its general partner

By: _____
Robert Dodds
President

By: _____
Charlie McPhee
Senior Vice President

LXA # _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Robert Dodds, President of Litchfield Park Service Company, an Arizona corporation, on behalf of the corporation.

Name

Title

My Commission expires:

LXA # _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008
by Charlie McPhee, Senior Vice President, Macerich TWC II Corp., a Delaware corporation, on
behalf of the corporation.

Name

Title

My Commission expires:
